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6 Attorneys for Defendant SA FOOD
SERVICE LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

11 PATRICIA FILARDI,
12 Plaintiff,
13 vs.
14 SA FOOD SERVICE LLC, a California
15 limited liability company; MONGSON,
16 LLC, a California limited liability
company; and DOES 1-10, inclusive,
Defendants.

CASE NO. 5:19-cv-00354-JFW
(SHKx)

**DEFENDANT SA FOOD SERVICE
LLC'S ANSWER TO PLAINTIFF'S
COMPLAINT**

The Hon. John F. Walter

Trial Date: None Set

19 Defendant SA FOOD SERVICE LLC (“Defendant”), answers Plaintiff
20 PATRICIA FILARDI’S (“Plaintiff”) Complaint by admitting, denying, and alleging
21 as follows:

PARTIES

23 1. In answer to Paragraph 1 of the Complaint, Defendant is without
24 sufficient knowledge or information to form a belief as to these allegations and on
25 that basis denies each of the allegations contained therein.

26 2. In answer to Paragraph 2 of the Complaint, Defendant states that this
27 paragraph contains Plaintiff's restatement of the law, to which no response is
28 required. To the extent a response is required, Defendant denies each and every

1 allegation contained therein.

2 3. In answer to Paragraph 3 of the Complaint, Defendant admits that
3 defendant MONGSON, LLC owned the real property identified as 25251 Madison
4 Avenue, Murrieta, California 92562 (the “Subject Property”) on December 30,
5 2018.

6 4. In answer to Paragraph 4 of the Complaint, Defendant admits that
7 defendant MONGSON, LLC currently owns the Subject Property.

8 5. In answer to Paragraph 5 of the Complaint, Defendant admits it owned,
9 operated, and controlled the Arby's #7132 (the "Subject Business") at the Subject
10 Property on December 30, 2018.

11 6. In answer to Paragraph 6 of the Complaint, Defendant admits it
12 currently owns, operates, and controls the Subject business located at the Subject
13 Property.

14 7. In answer to Paragraph 7 of the Complaint, Defendant states this is a
15 statement of the identity of the defendants sued herein as Does 1 through 10,
16 inclusive, and therefore, no response is required. To the extent a response is deemed
17 required, Defendant denies the allegations contained therein.

JURISDICTION AND VENUE

19 8. In answer to Paragraph 8 of the Complaint, Defendant admits that the
20 court has original jurisdiction over this action.

21 9. In answer to Paragraph 9 of the Complaint, Defendant states that this
22 paragraph contains Plaintiff's supplemental jurisdiction allegations, to which no
23 response is required. To the extent a response is deemed required, Defendant denies
24 the allegations, except to admit that this Court has jurisdiction over the subject
25 matter of Plaintiff's claims and may have supplemental jurisdiction until such time
26 as her federal claims are moot.

27 10. In answer to Paragraph 10 of the Complaint, admits that venue is
28 proper in this court.

FACTUAL ALLEGATIONS

11. In answer to Paragraph 11 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to these allegations and on that basis denies each of the allegations contained therein.

12. In answer to Paragraph 12 of the Complaint, Defendant admits that portions of the Subject Business are at times open to the public. Defendant denies each and every remaining allegation contained therein.

13. In answer to Paragraph 13 of the Complaint, Defendant admits that the Subject Business offers its customers parking spaces.

14. In answer to Paragraph 14 of the Complaint, Defendant denies each and every allegation contained therein.

15. In answer to Paragraph 15 of the Complaint, Defendant denies each and every allegation contained therein.

16. In answer to Paragraph 16 of the Complaint, Defendant denies each and every allegation contained therein.

17. In answer to Paragraph 17 of the Complaint, Defendant denies each and every allegation contained therein.

18. In answer to Paragraph 18 of the Complaint, Defendant denies each and every allegation contained therein.

19. In answer to Paragraph 19 of the Complaint, Defendant denies each and every allegation contained therein.

20. In answer to Paragraph 20 of the Complaint, Defendant denies each and every allegation contained therein.

21. In answer to Paragraph 21 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to these allegations and on that basis denies each of the allegations contained therein.

22. In answer to Paragraph 22 of the Complaint, Defendant lacks sufficient information to form a belief as to Plaintiff's intention to return to the Subject

1 Business. Defendant denies each and every remaining allegation contained therein.

2 23. In answer to Paragraph 23 of the Complaint, Defendant lacks sufficient
3 information to form a belief as to Plaintiff's desire to return to the Subject Business
4 with her allegedly disabled fiancé. Defendant denies each and every remaining
5 allegation contained therein.

6 24. In answer to Paragraph 24 of the Complaint, Defendant denies each and
7 every allegation contained therein.

8 25. In answer to Paragraph 25 of the Complaint, Defendant denies each and
9 every allegation contained therein.

10 26. In answer to Paragraph 26 of the Complaint, Defendant lacks sufficient
11 information to form a belief as to Plaintiff's intention to return to the Subject
12 Business with her allegedly disabled fiancé. Defendant denies each and every
13 remaining allegation contained therein.

14 | 27. In answer to Paragraph 27 of the Complaint, Defendant denies each and
15 | every allegation contained therein.

16 28. In answer to Paragraph 28 of the Complaint, Defendant denies each and
17 every allegation contained therein.

18 29. In answer to Paragraph 29 of the Complaint, Defendant denies each and
19 every allegation contained therein.

FIRST CAUSE OF ACTION

**VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990,
42 U.S.C. § 12181 et seq.**

23 30. In answer to Paragraph 30 of the Complaint, Defendant states that this
24 paragraph contains a recital of the allegations contained in paragraph 1 through 29
25 of the Complaint. Based on the foregoing, Defendant incorporates by reference
26 herein its responses to paragraphs 1 through 29 above.

27 31. In answer to Paragraph 31 of the Complaint, Defendant states that this
28 paragraph contains Plaintiff's restatement of the law, to which no response is

1 required. To the extent a response is required, Defendant denies each and every
2 allegation contained therein.

3 32. In answer to Paragraph 32 of the Complaint, Defendant states that part
4 of this paragraph contains Plaintiff's restatement of the law, to which no response is
5 required. To the extent a response is required, Defendant denies each and every
6 allegation contained therein.

7 33. In answer to Paragraph 33 of the Complaint, Defendant denies each and
8 every allegation contained therein.

9 34. In answer to Paragraph 34 of the Complaint, Defendant states that part
10 of this paragraph contains Plaintiff's restatement of the law, to which no response is
11 required. To the extent a response is required, Defendant denies each and every
12 allegation contained therein.

13 35. In answer to Paragraph 35 of the Complaint, Defendant lacks sufficient
14 information to form a belief as to whether Plaintiff will continue to desire to
15 patronize the Subject Business. Defendant denies each and every remaining
16 allegation contained therein.

SECOND CAUSE OF ACTION

**VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, CALIFORNIA CIVIL
CODE § 51 et seq.**

20 36. In answer to Paragraph 36 of the Complaint, Defendant states that this
21 paragraph contains a recital of the allegations contained in paragraph 1 through 35
22 of the Complaint. Based on the foregoing, Defendant incorporates by reference
23 herein its responses to paragraphs 1 through 35 above.

24 37. In answer to Paragraph 37 of the Complaint, Defendant states that part
25 of this paragraph contains Plaintiff's restatement of the law, to which no response is
26 required. To the extent a response is required, Defendant denies each and every
27 allegation contained therein. Defendant denies each and every remaining allegation
28 contained therein.

1 38. In answer to Paragraph 38 of the Complaint, Defendant denies each and
2 every allegation contained therein.

3 39. In answer to Paragraph 39 of the Complaint, Defendant denies each and
4 every allegation contained therein.

PRAAYER

6 The remainder of Plaintiff's Complaint contains Plaintiff's prayer for relief, to
7 which no response is required. To the extent a response is required, Defendant
8 denies each and every allegation contained therein and specifically denies that
9 Plaintiff is entitled to any relief whatsoever. Except as expressly admitted above,
10 Defendant denies each and every allegation contained in Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

FIRST SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to State a Claim)

14 | 1. Plaintiff's Complaint and each and every claim contained therein fails
15 | to state facts sufficient to state a claim upon which relief may be granted.

SECOND SEPARATE AND AFFIRMATIVE DEFENSE

(Statute of Limitations)

18 2. Defendant is informed and believes and thereon alleges that Plaintiff's
19 claims as contained in the Complaint are barred by the applicable statutes of
20 limitations, including, but not limited to, Civil Code section 51 et seq., and Code of
21 Civil Procedure section 335.1.

THIRD SEPARATE AND AFFIRMATIVE DEFENSE

(Waiver)

24 3. Defendant is informed and believes and thereon alleges that Plaintiff
25 has waived any and all claims that she may have had or has against Defendant
26 arising from the transactions and/or occurrences contained in the Complaint.

27 | //

28 | //

FOURTH SEPARATE AND AFFIRMATIVE DEFENSE

(Estoppel)

3 4. Defendant is informed and believes and thereon alleges that Plaintiff is
4 estopped by her own conduct from asserting any and all claims she may have had or
5 has against Defendant arising from the transactions and/or occurrences contained in
6 the Complaint.

FIFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Doctrine of Laches)

9 5. Defendant is informed and believes and thereon alleges that Plaintiff's
10 Complaint is barred in its entirety, by the Doctrine of Laches.

SIXTH SEPARATE AND AFFIRMATIVE DEFENSE (Unclean Hands)

13 6. Defendant is informed and believes and thereon alleges that Plaintiff's
14 Complaint is barred, in its entirety, by the doctrine of unclean hands.

SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE
(No Intentional Conduct)

17 7. Defendant did not engage in intentional conduct entitling Plaintiff to
18 recovery of damages pursuant to the Unruh Civil Rights Act.

EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE (Alternative Methods)

21 8. Defendant is informed and believes and thereon alleges based upon
22 information and belief that it and other third parties (i.e., tenant, landlord, etc.)
23 provide persons with disabilities alternatives to barrier removal by providing access
24 by alternative methods.

NINTH SEPARATE AND AFFIRMATIVE DEFENSE

(Isolated and/or Temporary Interruptions)

27 9. Defendant alleges based upon information and belief that it was
28 privileged and/or justified for the alleged conduct, if any, because the alleged

1 barriers were isolated and/or temporary interruptions in service or access due to
2 maintenance and/or repairs.

TENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Good Faith Belief)

5 10. The Complaint is barred, in whole or in part, because any actions taken
6 with respect to Plaintiff were based on honest, reasonable, and good faith beliefs in
7 the facts as known and understood at the time.

ELEVENTH SEPARATE AND AFFIRMATIVE DEFENSE

(No Standing for Barriers Not Affecting Plaintiff's Gender or Disability)

11. Plaintiff lacks standing to seek relief for barriers not affecting her
disability.

TWELFTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Plead with Certainty and Particularity)

14 12. The allegations of the Complaint, and each purported cause of action
15 contained therein, are not pled with sufficient particularity and are uncertain, vague,
16 ambiguous and unintelligible.

THIRTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Not Readily Achievable)

13. Some or all of the barrier removal proposed by Plaintiff are not readily
achievable.

FOURTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Failure to Comply with SB1186)

14. On information and belief, Plaintiff's Complaint and each cause of
action is barred because he failed to comply with the requirements of SB 1186.

FIFTEENTH SEPARATE AND AFFIRMATIVE DEFENSE

(Undue Burden)

27 15. Some or all of the barrier removal proposed by Plaintiff would result in
28 an undue burden for Defendant.

1 **SIXTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**
2 **(Failure to Mitigate Damages)**

3 16. Defendant alleges upon information and belief that Plaintiff has failed
4 to act reasonably to mitigate any damages that she has alleged in this action, if any
5 at all.

6 **SEVENTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**
7 **(Lack of Standing)**

8 17. Plaintiff's claims are barred, in whole or in part, because she has not
9 suffered harm and, therefore, Plaintiff lacks standing. *See Spokeo, Inc. v. Robins*,
10 136 S. Ct. 1540 (2016).

11 **EIGHTEENTH SEPARATE AND AFFIRMATIVE DEFENSE**
12 **(Business Justification)**

13 18. Defendant's activities, undertaken with respect to Plaintiff, were
14 justified as such activities were proper, fair, and legitimate business activities and/or
15 due to business-related reasons which were neither arbitrary, capricious, nor
16 unlawful.

17 **NINETEENTH SEPARATE AND AFFIRMATIVE DEFENSE**
18 **(No Statutory Damages Pursuant to SB 269)**

19 19. Plaintiffs are barred from recovery of minimum statutory damages
20 pursuant to SB 269.

21 **TWENTIETH SEPARATE AND AFFIRMATIVE DEFENSE**
22 **(Reservation of Rights Pertaining to Fraud)**

23 20. Defendant is informed and believes that the instant action is based on
24 fraudulent assertions. *See People of the State vs. Rutherford Case Number:*
25 *RIC1902577.*

26 **DEMAND FOR JURY TRIAL**

27 Defendant SA FOOD SERVICE, LLC hereby demands a jury trial in this
28 matter.

1 WHEREFORE, Defendant prays as follows:
2 1. Plaintiff take nothing by the Complaint;
3 2. Judgment be rendered in favor of Defendant;
4 3. Defendant be awarded costs of suit;
5 4. Defendant be awarded its attorney's fees incurred in the defense of this
6 action; and
7 5. Defendant be awarded whatever further relief the Court deems just and
8 proper.
9

10 DATED: May 8, 2019

LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12 By: /s/ Lauren R. Vanlochem

13 Melissa T. Daugherty
14 Lauren R. Vanlochem
15 Attorneys for Defendant SA FOOD
16 SERVICE LLC
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FEDERAL COURT PROOF OF SERVICE

PATRICIA FILARDI, an individual v. SA FOOD SERVICE LLC, a California limited liability company; MONGSON, LLC, a California limited liability company; - USDC Case No. 5:19-cv-00354 JFW (SHKx)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On May 8, 2019, I served the following document(s): DEFENDANT SA FOOD SERVICE LLC'S ANSWER TO PLAINTIFF'S COMPLAINT

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

Joseph R. Manning, Jr., Esq. (SBN 223381) Attorneys for Plaintiff
Michael J. Manning, Esq. (SBN 286879) PATRICIA FILARDI
Craig G. Cote, Esq. (SBN 132885)
Osman M. Taher, Esq. (SBN 272441)
David M. Fitzgerald (SBN 282471)
MANNING LAW, APC
20062 S.W. Birch Street, Suite 200
Newport Beach, CA 92660
Tel: (949) 200-8755
Fax: (866) 843-8308
ADAPracticeGroup@manninglawoffice.com

The documents were served by the following means:

(BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on May 8, 2019, at Los Angeles, California.

/s/ Tammve Laster
Tammve Laster